

# WETLANDS COUNCIL

## MINUTES

**April 12, 2005**

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The Wetlands Council met on Tuesday, April 12, 2005 at the Department of Environmental Services, 29 Hazen Dr., Concord, NH

**Attendees:** Brian K. Fowler, Chairman; Sharon Champagne, Thomas G. Chrisenton, John S. Cobb, William Dannehy, Ben Frost, William Ingham, Jr., Lawrence E. Morse, Glenn Normandeau, Seth Prescott, Russ St. Pierre, and Thomas Sloan

**Absentees:** Camilla Lockwood

The meeting was called to order by Chairman Brian Fowler at 9:05 a.m. Mr. Fowler introduced Seth Prescott, Commissioner Sean O'Kane's designee to the Wetlands Council on behalf of the Department of Resources and Economic Development.

1. **Approval of Minutes of January 11, 2005 Meeting**  
*A motion was made by Councilor Cobb and seconded by Councilor Normandeau to accept the minutes of January 11, 2005 as presented. It was unanimously voted.*
2. **Status of Appeals**  
Michael Sclafani, Appeals Clerk, distributed an Appeals Status Report and reviewed the report with council members.
  - Docket No. 02-16 WtC - Donald S. Thompson: WB #2002-01019  
A stay remains in effect. The appellant has not contacted the council since DES's December 13, 2004 decision not to revoke the permit which is the subject of this appeal. Mr. Sclafani will contact the appellant to determine if he wishes to proceed with the appeal.
  - Docket No. 03-11 WtC - Town of Barrington/Town of Nottingham  
A stay remains in effect. Mr. Sclafani expects to hear from Attorneys Kinder and Beliveau on the status of this appeal by the next council meeting.
  - Docket No. 04-07 WtC - Christopher Krochina: WB #2003-00183  
On January 13, 2005 a written Decision & Order denying the Motion for Reconsideration was issued. The council file is now closed.
  - Docket No. 04-08/09 WtC - GCC/CLF: WB #2002-01268  
On January 13, 2005 a written Decision & Order denying the Motions for Reconsideration was issued. The council file is now closed.

- Docket No. 04-11 WtC - Jeannette and Lauren Boss: WB #2001-00982  
An appeal hearing was held on January 11, 2005. The council voted to deny the appeal and a written Decision & Order was issued on February 2, 2005. A motion for reconsideration was not filed. The council file is now closed.
- Docket No. 04-13 WtC - Mark E. Young: WB #2003-02680  
On January 13, 2005, a written Decision & Order to deny the Motion for Reconsideration was issued. The council file is now closed.
- Docket No. 04-20 WtC - 27 Members of Focus Tamworth: WB #2004-00377  
On January 25, 2005 a Pre-hearing Conference was held and an Appeal Hearing is scheduled for April 12, 2005 at 10:00 a.m. Appellant filed a Pre-hearing Memo on March 25, 2005 and responses were filed by DES and the Applicant on April 1, 2005.
- Docket No. 04-21 WtC - Lakeshore Realty Trust: WB #2001-01294  
On January 12, 2005 appellant filed an Assented-to Motion to Stay pending a decision of a ZBA appeal to the Town of Alton. The Motion to Stay was granted by order issued on January 14, 2005. On April 11, 2005, Attorney Varney advised Mr. Sclafani that the appellant's ZBA appeal was denied and the appellant will continue to the next step in the ZBA appeal process. Attorney Varney will be filing a second Motion to Stay this appeal.
- Docket No. 04-23 WtC - John and Patricia Booth: WB #2004-00668  
This appeal was accepted at the council's January 12, 2005 meeting. The Wetlands Bureau filed its certified record on January 21, 2005 and Attorney K. Allen Brooks filed an appearance on behalf of DES on March 7, 2005. A pre-hearing conference was held on April 4, 2005. On April 8, 2005 the appellants filed a Motion to Stay pending a decision by the superior court on a declaratory judgment action on statute interpretation. DES has until April 13, 2005 to file a response to the Motion to Stay.

Ben Frost arrived.

- Docket No. 05-04 WtC - Philip and Georgette Smith: WB #2000-00914  
On March 23, 2005 a Notice of Appeal was filed pursuant to a Wetlands Bureau denial of a Request for Reconsideration dated February 25, 2005. The appellant is appealing the decision of the Wetlands Bureau that a permit for a seasonal docking structure on property of Lawrence and Susan Levine is not required. Attorney Biron Bedard filed an Appearance and a Motion to Intervene on behalf of Lawrence and Susan Levine.

***A motion was made by Councilor Chrisenton and seconded by Councilor Morse to accept the appeal. It was unanimously voted.***

***A motion was made by Councilor Chrisenton and seconded by Councilor Morse to grant the Motion to Intervene by Lawrence and Susan Levine. It was unanimously voted.***

- Docket No. 05-05 WtC - Steven Seufert: WB #2003-00296  
On March 28, 2005 a Notice of Appeal was filed pursuant to a Wetlands Bureau denial of a Request for Reconsideration dated February 25, 2005. This is an appeal of the Wetlands Bureau determination that appellant's Request for Reconsideration was filed late.

***A motion was made by Councilor Frost and seconded by Councilor Normandeau to accept the appeal. It was unanimously voted.***

### 3. Wetlands Bureau Update

#### In -Lieu Fee Mitigation Program

Collis Adams, Wetlands Bureau Administrator, distributed copies of testimony letters on SB 140 and HB 457.

SB 140 This bill authorizes DES to accept fees in lieu of mitigation for wetlands impacts in instances where mitigation is not possible on the project site. The money will go into a dedicated fund and be administered by DES. This bill has been approved by the Senate and is being heard by the House today. Mr. Adams pointed out that the Wetlands Council will be authorized to approve disbursements from the fund for wetlands restoration, creation and/or preservation projects.

Mr. Adams responded to councilors' comments as follows:

- The proposed rules specify a formula for determining the in-lieu fee for a project which is based on (1) the cost of construction of an acre of wetlands, (2) land value, which is adjusted depending on location within the state, and (3) administrative costs.
- Decisions on disbursements from the in-lieu fee fund would not be associated with a wetlands bureau permitting decision and, therefore, appeals would not fall within the jurisdiction of the Wetlands Council.
- The state will be divided into watershed districts. When the fund grows to a certain point, RFP's will be accepted. A technical advisory committee will evaluate and rank proposed projects. DES will review the committee's recommendations to confirm that the process was followed and calculations are correct. DES will then forward the recommendations to the Wetlands Council for review. The council will be the gatekeeper in the process and will approve disbursements from the fund.
- Applicants for funding may be conservation commissions, watershed associations, private landowners, or state agencies.

HB 457 exempts the cleaning of man-made water conveyance systems from wetlands permit requirements.

#### Staffing

Mr. Adams stated that the Wetlands Bureau is currently understaffed. There are three general funded positions open: two permitting positions and one education and outreach position. The two permitting positions have been vacant for over a month now. A request has been made to the governor's office to lift the hiring freeze and allow these positions to be filled.

Because of statutory timeframes in place on permitting, the one person currently staffing the education and outreach section will be assigned to permit application reviews along with one person from the compliance and enforcement section. Mr. Adams also indicated that the statute change which increased wetlands fees to allow for full staffing is due to sunset next year.

Mr. Fowler asked that the council be provided with reports reflecting permit turnaround time and other statistics as has been done in the past.

4. **Old Business**

There is no old business to come before the council.

5. **Other Business**

There is no other business to come before the council.

6. **Next Meeting**

The next meeting will be scheduled as determined by Chairman Fowler.

7. **Adjournment**

***A motion was made by Councilor Frost to adjourn. Councilor Sloan seconded the motion and it was unanimously voted.***

The meeting adjourned at approximately 10:00 a.m.